

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

SUSSEX COUNTY COURTHOUSE
1 The Circle, Suite 2
GEORGETOWN, DE 19947

July 12, 2011

Phyllis Drummond
SBI No. 0024
Baylor Women's Correctional Institution
660 Baylor Boulevard
New Castle, DE 19720

RE: State of Delaware v. Phyllis Drummond
Def. ID No. 0311018699A
Memorandum Opinion - Motion for Postconviction Relief

Date Submitted: May 5, 2011

Dear Ms. Drummond:

This is my decision on your fourth motion for postconviction relief. You were convicted of Robbery in the First Degree and Wearing a Disguise during the Commission of a Felony. The convictions arose out of your robbery of the Wilmington Trust Bank in Millsboro, Delaware on November 22, 2003. The Supreme Court affirmed your convictions on August 24, 2005.¹ You were represented at trial by Carole J. Dunn, Esquire. The State was represented at trial by Deputy Attorney General Peggy G. Marshall, Esquire. Both have submitted affidavits in response to the arguments that you raised in your fourth motion for postconviction relief.

You now argue that (1) your Sixth Amendment rights were violated because you did

¹ *Drummond v. State of Delaware*, 882 A.2d 761, 2005 WL 2475715 (Del. Aug. 24, 2005)(Table).

not have a jury of your peers, (2) the arrest warrant was improperly granted because the affidavit of probable cause was not signed, (3) the arrest warrant lacked probable cause, and (4) the Court was biased against you. The arguments raised in grounds one, two and four are barred by Superior Court Criminal Rule 61(i)(3) because you could have raised them in your direct appeal, but you did not do so. In order to avoid the procedural bar of Rule 61(i)(3), you must show that there was some external impediment that prevented you from raising your claims² and that there is a substantial likelihood that if your claims had been raised on appeal, the outcome would have been different.³ There is nothing in your fourth motion for postconviction relief that even addresses, let alone satisfies, these requirements.

The arguments raised in ground three of your fourth motion for postconviction relief are barred by Superior Court Criminal Rule 61(i)(4) because you raised them in your direct appeal to the Supreme Court.⁴ However, “this bar to relief does not apply to a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.”⁵ Given that you have not raised any new information to support your arguments, I have concluded that, as a practical matter, there is nothing for me to consider that has not already been considered and rejected by the

² *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

³ *Flamer v. State*, 585 A.2d 736, 748 (Del. 1990).

⁴ *Drummond v. State of Delaware*, 882 A.2d 761, 2005 WL 2475715 (Del. Aug. 24, 2005)(Table).

⁵ *Outten v. State*, 720 A.2d 547, 556 (Del. 1998), *citing* Super. Ct. Crim. R. 61(i)(5).

Supreme Court. Even though your allegations are procedurally barred, I will briefly address them.

I. The Jury

You argue that your Sixth Amendment rights were violated because you did not have a jury of your peers. The Sixth Amendment guarantees you the right to a public trial by an impartial jury. You argue you did not receive a fair trial because your jury was comprised entirely of white people and you are an African-American. The jury pool of 62 people consisted of 52 people that were white and 10 people that identified themselves as “black” or of other unknown racial heritage. The Defense exercised all six of its peremptory challenges, plus one challenge for the alternate jurors. The State exercised two of its peremptory challenges, plus one for the alternate jurors. Neither the State nor the Defense struck a minority. 10 *Del.C.* § 4501 states “that jurors serving in each county shall be selected at random from a fair cross section of the population of that county and that all qualified persons shall have an opportunity to be considered for jury service and an obligation to serve as jurors when summoned for that purpose.” This section is functionally equivalent to the Sixth Amendment fair cross section requirement.⁶ However, Chapter 45 of Title 10 does not guarantee a perfectly representative jury.⁷ The jury selection process adopted by the Superior Court for Sussex County meets all of the applicable requirements. It is fair, equitable and draws from the general population of Sussex County. Moreover, the Delaware Supreme Court has determined that this process meets all of the necessary

⁶ *Riley v. State*, 496 A.2d 997 (Del. 1985).

⁷ *State v. Ogle*, 2004 WL 838642 (Del.Super. April 7, 2004).

criteria.⁸ Thus, there was no constitutional problem with the jury panel or jury. This argument is without merit.

II. Arrest Warrant Singed and Affirmed

You argue that your arrest warrant should not have been granted because the affidavit of probable cause was not signed by the police officer who prepared it. Your argument is based upon the fact that you submitted an unsigned copy of the affidavit of probable cause with your motion. Your argument is baseless. The original affidavit and arrest warrant are in your file. The affidavit of probable cause is signed by the police officer who prepared it. The arrest warrant is signed by the magistrate who issued it. This argument is without merit.

III. Probable Cause

You argue that the police did not have probable cause to arrest you. This argument is based on the fact that the bank employees described the robber as a male and you are a female. You have raised this argument issue twice before. The first time was in your motion to suppress, which this Court denied. The second time was in your direct appeal to the Supreme Court. In its decision the Supreme Court stated, “[g]iven the totality of the circumstances (citations omitted), the trial court correctly determined that probable cause existed to arrest Drummond.”⁹ There is nothing for me to consider that has not already been considered and rejected by the Supreme Court. Moreover, I note that it is not surprising that the witnesses were mistaken given that you were wearing a disguise. This

⁸ *Riley*, 496 A.2d 997.

⁹ *Drummond v. State*, 882 A.2d 761, 2005 WL 2475715, at *1(Del. Aug. 24, 2005)(Table).

argument is without merit.

IV. Court Error

You argue that the Court erred because (1) it allowed you to be tried by an all-white jury, (2) knew that Detective Timothy Conaway perjured himself by failing to sign the affidavit of probable cause and allowing him to testify, and (3) knew your counsel was ineffective. The Court has already found, *supra*, that the first two allegations are without merit. As far as your contention that your counsel was ineffective, you have not provided any specific allegations to substantiate your claim. These arguments are without merit.

CONCLUSION

Your fourth motion for postconviction relief is **DENIED**.

IT IS SO ORDERED.

Very truly yours,

/S/ E. Scott Bradley

E. Scott Bradley

oc: Prothonotary's Office
cc: Peggy G. Marshall, Esquire
Carole J. Dunn, Esquire